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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DIANNE DAVIDOFF,

Plaintiff,

v.

DOLORES MATTEUCCI; LINDSEY SANDE, MONICA BYERS; DAVID HERNE; OREGON STATE HOSPITAL, OREGON HEALTH AUTHORITY,

Defendants.

Case No. 6:22-cv-00901-AA

STATE DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Jury Trial Requested

Defendants Monica Byers, Dolores Matteucci, Lindsey Sande, the Oregon State Hospital (“OSH”), and the Oregon Health Authority (“OHA”) (collectively referred to as “State Defendants”), by and through the undersigned, in response to Plaintiff’s Complaint, admit, deny, and allege as follows. State Defendants deny each and every allegation of Plaintiff’s Complaint not expressly admitted herein.

1.

State Defendants admit that Plaintiff Dianne Davidoff (hereinafter referred to as “Plaintiff”) was formerly housed in the Oregon State Hospital (“OSH”) due to a finding in 2017 of Guilty Except for Insanity (“GEI”) on one count of murder with a firearm and one count of unlawful use of a weapon with a firearm.

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2.

State Defendants admit that Defendant OSH is a public psychiatric hospital in the State of Oregon with locations in Salem, Marion County, Oregon; and in Junction City, Lane County, Oregon.

3.

State Defendants admit that Dolores Matteucci is currently employed with OSH as the Superintendent.

4.

State Defendants admit that Monica Byers is currently employed with OSH and serves as a nurse practitioner.

5.

State Defendants admit that Lindsey Sande is currently employed by OSH and serves as the Deputy Chief of Nursing at Junction City.

6.

State Defendants admit that David Herne was formerly employed by OSH.

7.

State Defendants admit the Oregon Department of Administrative Services (“DAS”) received a letter entitled “Tort Claim Notice” relating to Plaintiff and Defendants David Herne and the Oregon State Hospital on March 30, 2022, which DAS acknowledged and assigned claim number L181758-01. State Defendants further admit DAS received a letter entitled “Tort Claim Notice” related to Plaintiff and Defendant Monica Byers and OSH dated May 12, 2022, but received on May 16, 2022, which DAS acknowledged and assigned claim number L182117-01. Both letters were electronically signed by Plaintiff’s attorneys.

8.

To the extent that Plaintiff's allegations do not constitute legal arguments to which no response is required, State Defendants lack sufficient knowledge to admit or deny the remaining allegations at this time and therefore deny the same.

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim

9.

Plaintiff fails to state a claim upon which this Court can grant relief under one or more of the theories set forth in the Complaint.

SECOND AFFIRMATIVE DEFENSE

Qualified Immunity

10.

State Defendants allege that at all times relevant to Plaintiff's Complaint, they were acting in good faith and within their discretion pursuant to the laws and statutes of the State of Oregon and the United States, and that their conduct violated no clearly established statutory or constitutional rights of which a reasonable official would have knowledge.

THIRD AFFIRMATIVE DEFENSE

Eleventh Amendment Immunity

11.

State Defendants allege they are immune from suit in federal court and protected under Eleventh Amendment immunity as to Plaintiff's state and common law claims and as to federal claims against them in their official capacity.

FOURTH AFFIRMATIVE DEFENSE

Statute of Limitations

12.

All claims outside of the relevant statute of limitations period(s) are time barred.

FIFTH AFFIRMATIVE DEFENSE

Oregon Tort Claims Act (OTCA)

13.

State Defendants assert all provisions of the Oregon Tort Claims Act (OTCA), including, but not limited to, the provision requiring timely tort claim notice to Plaintiff's state and common law claims.

RESERVATION OF ADDITIONAL DEFENSES

14.

State Defendants reserve the right to assert additional defenses as may become known to them through investigation and discovery.

JURY TRIAL DEMAND

15.

State Defendants demand a jury trial.

WHEREFORE, having answered Plaintiff's Complaint herein, State Defendants pray for a judgment in their favor, for dismissal of Plaintiff's Complaint with prejudice and in its entirety, for an award of costs and disbursements incurred herein, and for such other and further relief as the Court may deem appropriate.

DATED September 26, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 26, 2022, I served the foregoing STATE DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES upon the parties hereto by the method indicated below, and addressed to the following:

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